

No. 11165

United States
Circuit Court of Appeals
For the Ninth Circuit.

EDGAR RUGGIERO and AMERIGO
BELLUOMINI,

Appellants,

vs.

UNITED STATES OF AMERICA

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED
MAR 20 1946

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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FRANK J. HENNESSY,

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San Francisco, California,

Attorney for Appellee.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 29633-R

UNITED STATES OF AMERICA,
Plaintiff,

vs.

AMERIGO BELLUOMINI,
Defendant.

INFORMATION

FIRST COUNT

(Second War Powers Act, Title III, Section 301,
Public Law 507, 77th Congress; Title 50
U.S.C.A. App., Section 633.)

Leave of Court being first had, Frank J. Hennessy, United States Attorney for the Northern District of California, comes, and for the United States of America informs this Court: That Amerigo Belluomini, (hereinafter called "said defendant"), did, on or about the 7th day of May, 1945, in the City and County of San Francisco, State of California, within the Southern Division of the Northern District of California, and within the jurisdiction of this Court, wilfully and unlawfully acquire, possess and control certain counterfeited and forged ration documents, to-wit: 5000 red meat ration stamps, under circumstances [1*] which

* Page numbering appearing at foot of page of original certified Transcript of Record.

would be in violation of Section 2.6 of General Ration Order No. 8 if the said counterfeited and forged ration documents were genuine, that is to say, the said defendant was not then and there, or at any time, a person, or the agent of a person, to whom said ration documents were issued, or by whom said ration documents were acquired in accordance with the provisions of any Ration Order, or a person, or the agent of a person by whom said ration documents were acquired, possessed and controlled as otherwise provided by any Ration Order. (General Ration Order No. 8, Sections 2.5 and 2.6; 8 F. R. 3783; General Ration Order No. 14; 8 F. R. 14211; General Ration Order No. 16, 9 F. R. 6731.)

SECOND COUNT

(Second War Powers Act, Title III, Section 301, Public Law 507, 77th Congress; Title 50 U.S.C.A. App. Section 633.)

And the said United States Attorney for the Northern District of California further informs this Court:

That said defendant, Amerigo Belluomini, on or about the 23rd day of May, 1945, in the City and County of San Francisco, State of California, within the Southern Division of the Northern District of California, and within the jurisdiction of this Court, did unlawfully, wilfully and knowingly transfer to one Leondro Messaglia certain counterfeited and forged ration documents, to-wit: 2500 red meat ration stamps, under circumstances, which

would be in violation of Section 2.6 of General Ration Order No. 8 if the said counterfeited and forged ration documents were genuine, that is to say, the said defendant did then and there transfer said 2500 red meat ration stamps to the said Leonardo Messaglia otherwise than in a way permitted and otherwise than for a purpose permitted by any Ration Order. (General Ration Order No. 8, [2] Sections 2.5 and 2.6; 8 F. R. 3783; General Ration Order No. 14; 8 F. R. 14211; General Ration Order No. 16; 9 F. R. 6731.)

THIRD COUNT

(Second War Powers Act, Title III, Section 301, Public Law 507, 77th Congress; Title 50 U.S.C.A. App., Section 633.)

And the said United States Attorney for the Northern District of California further informs this Court:

That the said defendant, Amerigo Belluomini, on or about the 9th day of May, 1945, in the City and County of San Francisco, State of California, within the Southern Division of the Northern District of California, and within the jurisdiction of this Court, did unlawfully, wilfully and knowingly transfer to one Bank of America National Trust and Savings Association, 37th Avenue and Balboa Street Branch, San Francisco, California, certain counterfeited and forged ration documents, to-wit: 2500 red meat ration stamps, under circumstances which would be in violation of Section 2.6 of General Ration Order No. 8 if the said counterfeited

and forged ration documents were genuine, that is to say, the said defendant did then and there transfer said 2500 meat ration stamps to the said Bank of America National Trust and Savings Association, 37th Avenue and Balboa Street Branch, San Francisco, California, otherwise than in a way permitted and otherwise than for a purpose permitted by any Ration Order. (General Ration Order No. 8, Sections 2.5 and 2.6; 8 F. R. 3783; General Ration Order No. 14; 8 F. R. 14211; General Ration Order No. 16; 9 F. R. 6731.)

(Signed) FRANK J. HENNESSY

United States Attorney [3]

United States of America,
State and Northern District of California,
City and County of San Francisco—ss.

James O. Reimel, being first duly sworn, deposes and says: That he is an Investigator employed by the Office of Price Administration; that he has read the foregoing information; that he is familiar with the facts therein alleged concerning the offenses therein described, and that the same are true of his own knowledge.

JAMES O. REIMEL

Subscribed and sworn to before me this 30th day of July, 1945.

[Seal]

M. E. VAN BUREN

Deputy Clerk, U. S. District Court, Nor. Dist. of
California

[Endorsed]: Presented in Open Court and
Ordered Filed July 31, 1945. [4]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 29635-R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDGAR RUGGIERO,

Defendant.

INFORMATION

FIRST COUNT

(Second War Powers Act, Title III, Section 301,
Public Law 507, 77th Congress; Title 50
U.S.C.A. App., Section 633.)

Leave of Court being first had, Frank J. Hennessy, United States Attorney for the Northern District of California, comes, and for the United States of America informs this Court: That Edgar Ruggiero, (hereinafter called "said defendant"), did, on or about the 7th day of May, 1945, in the City and County of San Francisco, State of California, within the Southern Division of the Northern District of California, and within the jurisdiction of this Court, wilfully and unlawfully acquire, possess and control certain counterfeited and forged ration documents, to-wit: 8700 red meat ration stamps, under circumstances which would be in violation of Section 2.6 of General Ration Order No. 8 if the said counterfeited and forged ration

documents were genuine, that is to say, the said defendant was not then and there, or at any time, a person, or the agent of a person, to whom said ration documents were issued, or by whom said ration documents were acquired in accordance with the provisions [5] of any Ration Order, or a person, or the agent of a person by whom said ration documents were acquired, possessed and controlled as otherwise provided by any Ration Order. (General Ration Order No. 8, Sections 2.5 and 2.6; 8 F. R. 3783; General Ration Order No. 14, 8 F. R. 14211; General Ration Order No. 16, 9 F. R. 6731.)

SECOND COUNT

(Second War Powers Act, Title III, Section 301, Public Law 507, 77th Congress; Title 50 U.S.C.A. App., Section 633.)

And the said United States Attorney for the Northern District of California further informs this Court:

That the said defendant, Edgar Ruggiero, on or about the 7th day of May, 1945, in the City and County of San Francisco, State of California, within the Southern Division of the Northern District of California, and within the jurisdiction of this Court, did unlawfully, wilfully and knowingly transfer to one Amerigo Belluomini certain counterfeited and forged ration documents, to-wit: 5000 red meat ration stamps, under circumstances which would be in violation of Section 2.6 of General Ration Order No. 8 if the said counterfeited and

forged ration documents were genuine, that is to say, the said defendant did then and there transfer said 5000 red meat ration stamps to the said Amerigo Belluomini otherwise than in a way permitted and otherwise than for a purpose permitted by any Ration Order. (General Ration Order No. 8, Sections 2.5 and 2.6; 8 F. R. 3783; General Ration Order No. 14, 8 F. R. 14211; General Ration Order No. 16, 9 F. R. 6731.)

THIRD COUNT

(Second War Powers Act, Title III, Section 301, Public Law 507, 77th Congress; Title 50 U.S.C.A. App., Section 633.)

And the said United States Attorney for the Northern District of California further informs this Court:

That the said defendant, Edgar Ruggiero, on or about the 7th day of May, 1945, in the City and County of San Francisco, State of California, within the Southern Division of the Northern District of California, and within the jurisdiction of this Court, did unlawfully, wilfully and knowingly transfer to one Bank of America National Trust and Savings Association, West Portal Branch, San Francisco, California, certain counterfeited and forged ration [6] documents, to-wit: 3780 red ration meat stamps, under circumstances which would be in violation of Section 2.6 of General Ration Order No. 8 if the said counterfeited and forged ration documents were genuine, that is to say, the said

defendant did then and there transfer said 3780 red ration meat stamps to the said Bank of America National Trust and Savings Association, West Portal Branch, San Francisco, California, otherwise than in a way permitted and otherwise than for a purpose permitted by any Ration Order. (General Ration Order No. 8, Section 2.5 and 2.6; 8 F. R. 3783; General Ration Order No. 14, 8 F. R. 14211; General Ration Order No. 16, 9 F. R. 6731.)

(Signed) FRANK J. HENNESSY

United States Attorney

United States of America,
State and Northern District of California,
City and County of San Francisco—ss.

James O. Reimel, being first duly sworn, deposes and says: That he is an Investigator employed by the Office of Price Administration; that he has read the foregoing Information; that he is familiar with the facts therein alleged concerning the offenses therein described, and that the same are true of his own knowledge.

JAMES O. REIMEL

Subscribed and sworn to before me this 30th day of July, 1945.

[Seal]

M. E. VAN BUREN

Deputy Clerk, U. S. District Court, Nor. Dist. of
California

[Endorsed]: Presented in Open Court and
Ordered Filed July 31, 1945. [7]

[Title of District Court and Cause—No. 2933-R.]

DEMURRER TO INFORMATION

Now comes Amerigo Belluomini, the defendant in the cause entitled as above, and demurs to the information on file herein and to each of the several counts thereof, and says that the matters and things in said information and in each of the several counts thereof alleged are insufficient in law to require this defendant to answer thereto, for each of the following reasons, to-wit:

I.

That the said First Count of said Information does not state facts sufficient to charge this defendant with any crime or offense against the United States.

II.

That said First Count of said Information is bad for uncertainty in each of the following particulars, to-wit:

(a) That the said First Count alleges that the said defendant [8] did wilfully and unlawfully acquire, possess and control certain counterfeited and forged ration documents, but that the said documents are not, nor is any of said documents, set forth either according to its tenor or according to its purport;

(b) That it cannot be ascertained therefrom whether the documents alleged to have been counterfeited and forged were counterfeits or forgeries of any documents issued by the United States of

America or by any department, agency, board or officer thereof having authority to issue the same;

(c) That it cannot be ascertained therefrom how or in what manner said defendant was not a person or the agent of a person by whom said ration documents were acquired in accordance with the provisions of any ration order, or a person or the agent of a person by whom said ration documents were acquired, possessed or controlled as otherwise provided by any ration order;

(d) That it cannot be ascertained therefrom how or in what manner the said defendant violated any provision of any so-called ration order.

III.

That the said Second Count of said Information does not state facts sufficient to charge this defendant with any crime or offense against the United States.

IV.

That said Second Count of said Information is bad uncertainty in each of the following particulars, to-wit:

(a) That the said Second Count alleges that the said defendant did unlawfully, wilfully and knowingly transfer certain counterfeited and forged ration documents, but the said documents are not, nor is any of said documents, set forth either according to its tenor or according to its purport;

(b) That it cannot be ascertained therefrom whether the documents alleged to have been coun-

terfeited and forged were counterfeits or forgeries of any documents issued by the United States of America or by any department, agency, board or officer thereof having authority to issue the same;

(c) That it cannot be ascertained therefrom how or in what manner the transfer of the so-called meat ration stamps therein referred to was otherwise than in a way permitted or otherwise than for a purpose permitted by any ration order.

(d) That it cannot be ascertained therefrom how or in what manner the said defendant violated any provision of any so-called ration order.

V.

That the said Third Count of said Information does not state facts sufficient to charge this defendant with any crime or offense against the United States.

VI.

That said Third Count of said Information is bad for uncertainty in each of the following particulars, to-wit:

(a) That the said Third Count alleges that the said defendant did unlawfully, wilfully and knowingly transfer to one Bank of America National Trust and Savings Associations, 37th Avenue and Balboa Street Branch, San Francisco California, certain counterfeited and forged ration documents, set forth either according to its tenor or according to its purport.

(b) That it cannot be ascertained therefrom

whether the documents alleged to have been counterfeited and forged were counterfeits or forgeries of any documents issued by the United States of America or by any department, agency, board or officer thereof having authority to issue the same;

(c) That it cannot be ascertained therefrom how or in what manner the transfer of the so-called meat ration stamps therein referred to as alleged in said count was otherwise than in a way permitted or otherwise than for a purpose permitted by any ration order;

(d) That it cannot be ascertained therefrom how or in what manner the said defendant violated any provision of any so-called ration order. [10]

VII.

That this honorable court has no jurisdiction of the above entitled cause or to hear or determine the said information, or to try this defendant thereon or as to any count thereof, for the reason that General Ration Order 8 is unconstitutional and void, and that no criminal prosecution will lie for any alleged violation of any of the provisions of said order, for the reason that section 3.1 of Article III of said General Ration Order purports and attempts to punish the violation of the said order or any other ration order as a crime and fixes the penalty therefor; and that the Price Administrator has no power to declare what acts shall be criminal or shall constitute crimes, or to determine the punishments for any act; that no statute of the United States, and no act of Congress, confers upon

the Price Administrator the power to define or to punish crimes, and that if any act of Congress can be construed as an authorization to said Price Administrator to define and punish crimes, or to declare that any act shall constitute a crime and fix the punishment therefor, such Act is to that extent unconstitutional and void, and in violation of the provision of the Fifth Amendment to the Constitution of the United States that no person shall be deprived of life, liberty or property without due process of law, and is an unlawful delegation of legislative powers which are vested by the constitution of the United States in the Congress alone.

Wherefore, said defendant prays that this Demurrer be sustained and that defendant go hence without day.

(Signed) WILLIAM PETROS

Attorney for Defendant,

Wm. E. Ferriter.

(Here follows points and authorities in support of Demurrer.)

[Endorsed]: Filed Aug. 21, 1945. [11]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of
the United States District Court for the Northern
District of California, held at the Court Room
thereof, in the City and County of San Francisco,
on Tuesday the 14th day of August, in the year of
our Lord one thousand nine hundred and forty-
five.

Present: The Honorable A. F. St. Sure, District
Judge, sitting for and on behalf of Honorable Louis
E. Goodman, District Judge.

[Title of Cause.—No. 29635-R.]

ORDER ENTERING DEFENDANT'S PLEA
OF NOT GUILTY

This case came on regularly this day to plead.
The defendant, Edgar Ruggiero, was present in
proper person and with his attorney, Walter
Duane, Esq. Reynold H. Colvin, Esq., Assistant
United States Attorney, was present on behalf of
the United States.

The defendant was called to plead and thereupon
said defendant pleaded "Not Guilty" to the Infor-
mation filed herein against him, which said plea
was ordered entered. Defendant requested trial
by jury. After hearing the attorneys, it is ordered
that this case be continued to August 21, 1945, to
be set for trial. [12]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of
the United States District Court for the Northern
District of California, held at the Court Room
thereof, in the City and County of San Francisco,
on Monday, the 27th day of August, in the year of
our Lord one thousand nine hundred and forty-
five.

Present: The Honorable A. F. St. Sure, District
Judge, sitting for and on behalf of Honorable
Michael J. Roche, District Judge.

[Title of Cause—No. 29635-R.]

ORDER ENTERING DEFENDANT'S PLEA
OF NOT GUILTY AND OVERRULING
DEMURRER TO INFORMATION

This case came on regularly this day for entry
of plea and hearing on demurrer to Information.
The defendant Amerigo Belluomini was present in
proper person and with his attorney, Wm. Ferriter,
Esq. Reynold H. Colvin, Esq., Assistant United
States Attorney, was present on behalf of the
United States.

The defendant was called to plead and thereupon
said defendant pleaded "Not Guilty" to the Infor-
mation filed herein against him, which said plea
was ordered entered.

After hearing the attorneys, It Is Ordered that
the demurrer to Information be and the same is
hereby overruled.

Further ordered that this case be continued to
September 11, 1945, to be set for trial. [13]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of
the United States District Court for the Northern
District of California, held at the Court Room
thereof, in the City and County of San Francisco,
on Tuesday, the 9th day of October, in the year
of our Lord one thousand nine hundred and forty-
five.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Causes—Nos. 29633 and 29635.]

MINUTES OF TRIAL BY COURT AND CONVICTION

These two cases came on regularly this day for
trial before the Court sitting without a jury, a
trial by jury having been heretofore waived. The
defendant Amerigo Belluomini was present with
William Ferriter, Esq., and William Petros, Esq.,
his attorneys. The defendant Edgar Ruggiero was
present with Walter Duane, Esq., his attorney.
Reynold H. Colvin, Esq., Assistant United States
Attorney, was present on behalf of the United
States.

By stipulation, it is Ordered that these two cases
be consolidated for trial. Mr. Colvin and Mr.
Ferriter made [14] their respective opening state-
ments to the Court. E. W. Slade and James Reimel
were each sworn and testified on behalf of the
United States. Mr. Colvin introduced in evidence

and filed U. S. Exhibits 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, 2-A, 2-B, 2-C, 2-D, 2-E, 3 and 4; and thereupon the United States rested. Mr. Ferriter made a motion to dismiss the Informations, which motion, after hearing Mr. Ferriter and Mr. Colvin, was ordered denied. Edgar Ruggiero and Amerigo Belluomini were each sworn and testified in their own behalf. Mr. Duane introduced in evidence and filed Defendant's Exhibit A. The defendants then rested. The evidence being closed, and the case being submitted and fully considered, it is Ordered that the defendants Amerigo Belluomini and Edgar Ruggiero be, and each is hereby adjudged guilty as charged in the Informations.

Mr. Duane and Mr. Ferriter each made a motion to refer these cases to the Probation Officer, whereupon it is Ordered that these two cases be referred to the Probation Officer of this Court for a presentence investigation.

Ordered that these cases be continued to October 12, 1945, for pronouncing of judgment. Further ordered that the defendants be remanded to the custody of the United States Marshal to await judgment and that mittimus issue herein. [15]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday the 12th day of October, in the year of our Lord one thousand nine hundred and forty-five.

Present: The Honorable Michael J. Roche,
District Judge.

[Title of Causes—Nos. 29633, 29635.]

SENTENCE

These cases came on regularly this day for the pronouncing of judgment. The defendants were present in the custody of the United States Marshal and with their respective attorneys: William Ferriter, Esq., for defendant Amerigo Belluomini; and Walter Duane, Esq., for defendant Edgar Ruggiero. Reynold H. Colvin, Esq., Assistant United States Attorney, was present on behalf of the United States. M. T. Curran, Probation Officer, was present.

The defendants were called for judgment. After hearing the attorneys, and due consideration having been had on the report of the Probation Officer, and the said defendants having been now asked whether they have anything to say why [16] judgment should not be pronounced against them, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By the Court

Ordered and Adjudged that the said defendants Ameriga Belluomini and Edgar Ruggiero, having been adjudged guilty by the Court of the offenses charged in the Information filed in the above entitled cases, be and each is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Six (6) Months on each of Counts One, Two and Three of the Information and pay a fine to the United States of America in the sum of One Thousand (\$1,000.00) Dollars on each of Counts One, Two and Three of the Information, making a total fine of Three Thousand (\$3,000.00) Dollars, and in default of payment of fine that the defendant so in default be further imprisoned until payment of said fines or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the sentences of imprisonment imposed on defendant in this case on Counts One, Two and Three of the Information commence and run concurrently.

Ordered that judgment be entered herein accordingly in each of said cases.

It is Further Ordered that the Clerk of this Court deliver a certified copy of each judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

The Court recommends commitment to a Jail Type Institution. [17]

District Court of the United States, Northern
Northern District of California, Southern Division

No. 29633-R

UNITED STATES OF AMERICA

vs.

AMERIGO BELLUOMINI

Criminal Information in Three counts for violation
of Second War Powers Act, Title III, Section
301, Public Law 507, 77th Congress; Title 50
U.S.C.A., App., Section 633.

JUDGMENT AND COMMITMENT

On this 12th day of October, 1945, came the
United States Attorney, and the defendant Amerigo
Belluomini appearing in proper person, and by
counsel, and,

The defendant having been adjudged guilty by
the Court of the offenses charged in the Informa-
tion in the above-entitled cause, to-wit: Viol. Title
50 USCA App., Section 633. Count One—Defend-
ant did, on or about May 7, 1945, in San Francisco,
California, unlawfully possess certain counterfeited
and forged Red Meat Ration Stamps. Counts Two
and Three—Defendant did, on or about May 23,
1945, and May 9, 1945, respectively, in San Fran-
cisco, California, unlawfully transfer to a certain
individual and to the Bank of America, 37th Ave.
& Balboa St. Branch, certain counterfeited and

forged Red Meat Ration Stamps and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Six (6) Months on each of Counts One, Two and Three of the Information, and pay a fine to the United States of America in the sum of One Thousand (1,000.00) Dollars on each of Counts One, Two and Three of the Information, making a total fine of Three Thousand (3,000.00) Dollars, and that said defendant be further imprisoned until payment of said fines, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the sentences of imprisonment imposed on defendant in this case on Counts One, Two and Three of the Information commence and run concurrently.

Entered in Vol. 36 Judg. and Decrees at page 394.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer

and that the same shall serve as the commitment herein.

(Signed) MICHAEL J. ROCHE

United States District Judge

Examined by:

REYNOLD H. COLVIN

Assistant U. S. Attorney

The Court recommends commitment to a Jail Type Institution.

[Endorsed]: Filed and Entered this 12th day of October, 1945. [18]

District Court of the United States, Northern
District of California, Southern Division

No. 29635-R

UNITED STATES OF AMERICA

vs.

EDGAR RUGGIERO

Criminal Information in Three counts for violation
of Second War Powers Act, Title III, Section
301, Public Law 507, 77th Congress; Title 50
U.S.C.A., App. Section 633.

JUDGMENT AND COMMITMENT

On this 12th day of October, 1945, came the United States Attorney, and the defendant Edgar Ruggiero appearing in proper person, and by counsel, adjudged guilty by the Court of the offenses

charged in the Information in the above-entitled cause, to-wit: Viol. Title 50 USCA App., Section 633. Count One—Defendant did, on or about May 7, 1945, in San Francisco, California, unlawfully possess certain counterfeited and forged Red Meat Ration Stamps. Counts Two and Three—Defendant did, on the aforesaid date, in San Francisco, California, unlawfully transfer to a certain individual and to the Bank of America West Portal Branch, certain counterfeited and forged Red Meat Ration Stamps, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Six (6) Months on each of Counts One, Two and Three of the Information, and pay a fine to the United States of America in the sum of One Thousand (1,000.00) Dollars on each of Counts One, Two and Three of the Information, making a total fine of Three Thousand (\$3,000.00) Dollars, and that defendant be further imprisoned until payment of said fines, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the sentences of imprisonment imposed on defendant in this case on Counts One, Two and Three of the Information commence and run concurrently.

Entered in Vol. 36, Judg. and Decrees at page 395.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) MICHAEL J. ROCHE

United States District Judge

Examined by:

REYNOLD H. COLVIN

Assistant U. S. Attorney

The Court recommends commitment to a Jail Type Institution.

[Endorsed]: Filed and Entered this 12th day of October, 1945. [19]

[Title of District Court and Cause—No. 29633-R.]

NOTICE OF APPEAL

Name and address of Appellant: Amerigo Belluomini, 34 Parsons Street, San Francisco, California.

Name and address of Appellant's attorneys: William E. Ferriter, Esq., 645 Mills Tower, San Francisco, California, and William Petros, Esq., 645 Mills Tower, San Francisco 4, California.

Offense: Violating Second War Powers Act, Title III, Sec. 301, Public Law 507, 77th Congress, Title 50, U.S.C.A. App., Sec. 633.

Date of Judgment: October 12th, 1945. [20]

BRIEF DESCRIPTION OF JUDGMENT AND SENTENCE

The defendant was adjudged guilty of the above named violation charged in an Information filed by Frank J. Hennessy, United States Attorney for the Northern District of California on July 31, 1945, and sentenced to imprisonment for a period of six months on each of the three counts of said Information, said sentences to run concurrently in the County Jail, and fined the sum of One Thousand Dollars (\$1.000) on each of the three counts of said Information.

Appellant is at liberty on bail deposited with the Clerk of the above entitled Court pursuant to order made on the day of October, 1945, by the Honorable Michael J. Roche, the trial judge, fixing such bail upon this appeal.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the judgment above mentioned, on the grounds set forth below:

1. That the evidence adduced upon the trial of said cause was insufficient to warrant the judgment of conviction;

2. That the court lacked jurisdiction to, and did therefore improperly, sentence appellant to both fine and imprisonment upon a conviction of the three counts contained in said Information, in that none of the said counts contained in said Information charges or attempts to charge or purports to charge any violation of the Second War Powers

Act, Title III, section 301, Public Law 507, 77th Congress, Title 50 U.S.C.A App., sec. 633;

3. That, inasmuch as the said information and the three counts contained therein do not charge or purport to charge a violation of the Second War Powers Act, the judgment and conviction herein imposed is void; [21]

4. That the said Information and the three counts therein contained charge and purport to charge a violation of section 2.6 of General Ration Order No. 8; and that, inasmuch as said conviction and the sentences imposed herein are based upon said violation, said conviction and sentences are void, and each of said sentences is void.

5. That the learned trial judge committed errors in law arising during the course of the trial, and erred in the decision of questions of law arising during the course of said trial;

6. That the evidence adduced and received upon the trial of said cause was insufficient as a matter of law to justify the judgment of the trial court;

7. That the learned trial judge erred in denying the motion to dismiss at the conclusion of the case of the prosecution, for the reason that taking said evidence in said cause was not sufficient as a matter of law to support the judgment of "Guilty";

8. That this honorable court has no jurisdiction of the above entitled cause or to hear or determine the said Information, or to try this defendant thereon or as to any count thereof, for the reason that General Ration Order 8 is unconstitutional and void, and that no criminal prosecution will lie for

any alleged violation of any of the provisions of said order, for the reason that section 3.1 of Article III of said General Ration Order purports and attempts to punish the violation of the said order or any other ration order as a crime and fixes the penalty therefor; and that the Price Administrator has no power to declare what acts shall be criminal or shall constitute crimes, or to determine the punishments for any act; that no statute of the United States, and no act of Congress, confers upon the Price Administrator [22] the power to define or to punish crimes, and that if any act of Congress can be construed as an authorization to said Price Administrator to define and punish crimes, or to declare that any act shall constitute a crime and fix the punishment therefor, such Act is to that extent unconstitutional and void, and in violation of the provision of the Fifth Amendment to the Constitution of the United States that no person shall be deprived of life, liberty or property without due process of law, and is an unlawful delegation of legislative powers which are vested by the constitution of the United States in the Congress alone.

Dated: October 12, 1945.

AMERIGO BELLUOMINI

Appellant

WM. E. FERRITER

WM. PETROS

Attorneys for Appellant

[Endorsed]: Filed Oct. 12, 1945. [23]

[Title of District Court and Cause—No. 29635-R.]

NOTICE OF APPEAL

Name and Address of Appellant: Edgar Ruggiero,
San Francisco, California.

Name and Address of Appellant's Attorney: Walter H. Duane, Esq., 790 Mills Building, San Francisco 4, California.

Offense: Violating Second War Powers Act, Title III, sec. 301, Public Law 507, 77th Congress, Title 50, U.S.C.A. App., sec. 633.

Date of Judgment: October 12th, 1945. [24]

BRIEF DESCRIPTION OF JUDGMENT AND SENTENCE

The defendant was adjudged guilty of the above named violation charged in an Information filed by Frank J. Hennessy, United States Attorney for the Northern District of California, on July 31, 1945, and sentenced to imprisonment for a period of six months on each of the three counts of said Information, said sentences to run concurrently in the County Jail, and fined the sum of One Thousand Dollars (\$1,000) on each of the three counts of said Information.

Appellant is at liberty on bail deposited with the Clerk of the above entitled Court pursuant to order made on the 13th day of October, 1945 by the Honorable Michael J. Roche, the trial judge, fixing such bail upon this appeal.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the judgment above mentioned, on the grounds set forth below:

1. That the evidence adduced upon the trial of said cause was insufficient to warrant the judgment of conviction;

2. That the court lacked jurisdiction to, and did therefore improperly, sentence appellant to both fine and imprisonment upon a conviction of the three counts contained in said Information, in that none of the said counts contained charges or attempts to charge or purports to charge any violation of the Second War Powers Act, Title III, section 301, Public Law 507, 77th Congress, Title 50 U.S.C.A. App., sec. 633;

3. That, inasmuch as the said information and the three counts contained therein do not charge or purport to charge a violation of the Second War Powers Act, the judgment and conviction herein imposed is void;

4. That the said Information and the three counts therein contained charge and purport to charge a violation of [25] section 2.6 of General Ration Order No. 8; and that, inasmuch as said conviction and the sentences imposed herein are based upon said violation, said conviction and sentences are void, and each of said sentences is void;

5. That the learned trial judge committed errors in law arising during the course of the trial, and erred in the decision of questions of law arising during the course of said trial;

6. That the evidence adduced and received upon the trial of said cause was insufficient as a matter of law to justify the judgment of the trial court;

7. That the learned trial judge erred in denying the motion to dismiss at the conclusion of the case of the prosecution, for the reason that taking said evidence in said cause was not sufficient as a matter of law to support the judgment of "Guilty";

8. That this honorable court has no jurisdiction of the above entitled cause or to hear or determine the said Information or to try this defendant thereon or as to any count thereof, for the reason that General Ration Order 8 is unconstitutional and void, and that no criminal prosecution will lie for any alleged violation of any of the provisions of said order, for the reason that section 3.1 of Article III of said General Ration Order purports and attempts to punish the violation of said order or any other ration order as a crime and fixes the penalty therefor; and the Price Administrator has no power to declare what acts shall be criminal or shall constitute crimes, or to determine the punishments for any act; that no statute of the United States, and no act of Congress, confers upon the Price Administrator the power to define or to punish crimes, and that if any act of Congress can be construed as an authorization to said Price Administrator to define and punish crimes, or to declare that any act shall constitute a crime and fix the [26] punishment therefor, such Act is to that extent unconstitutional and void,

and in violation of the provisions of the Fifth Amendment to the Constitution of the United States that no person shall be deprived of life, liberty or property without due process of law, and is an unlawful delegation of legislative powers which are vested by the constitution of the United States in the Congress alone.

Dated: October 12, 1945.

EDGAR RUGGIERO

Appellant.

WALTER H. DUANE

Attorney for Appellant.

[Endorsed]: Filed Oct. 13, 1945. [27]

[Title of District Court and Cause—No. 29633-R.]

ASSIGNMENT OF ERRORS OF DEFENDANT
AMERIGO BELLUOMINI

Now Comes the Defendant, Amerigo Belluomini, who heretofore has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence heretofore given, made and entered against said defendant in the above entitled cause, and files this, his assignment of the errors on which he will rely in the prosecution of the said appeal: [28]

1. That the said District Court erred in overruling the Demurrer of this defendant to the Information in the above entitled cause;

2. That the said Information does not, nor does any of the several counts thereof, charge this defendant with any crime or offense against the United States of America, and that said District Court accordingly had no jurisdiction to hear or determine the same, or to render judgment or pass sentence upon this defendant;

3. That the evidence taken and had upon the trial of the said cause was and is insufficient to justify the verdict or order of the court finding this defendant guilty on the said Information, or on any of the several counts thereof;

4. That said District Court erred in denying the motion of defendants to dismiss;

5. That said District Court erred in ruling that the evidence was sufficient to justify a conviction upon all or any of the counts in the said Information.

Wherefore, said defendant, Amerigo Belluomini, prays that the judgment and sentence aforesaid be reversed, and that the said defendant go hence, without day.

(Signed) WM. E. FERRITER,
Attorney for defendant,
Amerigo Belluomini.

Service Acknowledged October 25, 1945.

FRANK J. HENNESSY

United States Attorney for the Northern District
of California.

[Endorsed]: Filed Oct. 25, 1945. [29]

[Title of District Court and Cause—No. 29635-R]
ASSIGNMENT OF ERRORS OF DEFENDANT
EDGAR RUGGIERO

Now Comes the Defendant, Edgar Ruggiero, who heretofore has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence heretofore given, made and entered against said defendant in the above entitled cause, and files this, his assignment of the errors on which he will rely in the prosecution of the said appeal; [30]

1. That the said Information does not, nor does any of the several counts thereof, charge this defendant with any crime or offense against the United States of America, and that said District Court accordingly had no jurisdiction to hear or determine the same, or to render judgment or pass sentence upon this defendant;

2. That the evidence taken and had upon the trial of the said cause was and is insufficient to justify the verdict or order of the court finding this defendant guilty on the said Information, or on any of the several counts thereof;

3. That said District Court erred in denying the motion of defendants to dismiss;

4. That said District Court erred in ruling that the evidence was sufficient to justify a conviction upon all or any of the counts in the said Information.

Wherefore, said defendant, Edgar Ruggiero,

prays that the judgment and sentence aforesaid be reversed, and that the said defendant go hence, without day.

WALTER H. DUANE,
Attorney for Defendant
Edgar Ruggiero.

Service Acknowledged October 25, 1945.

FRANK J. HENNESSY

United States Attorney for the Northern District
of California.

[Endorsed]: Filed Oct. 25, 1945. [31]

[Title of Court and Cause—Nos. 29633, 29635.]

BILL OF EXCEPTIONS

To Be Used on the Appeals of Defendants to the
United States Circuit Court of Appeals for the
Ninth Circuit. [32]

Now Come Amerigo Belluomini and Edgar Ruggiero, the Defendants in the causes numbered and entitled as above, which said causes were, by order of the said District Court, pursuant to stipulation of counsel for each of the said defendants, consolidated for the purpose of trial, and present this, their Bill of Exceptions to be used upon their several appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgments and sentences severally given, made and entered against said defendants in and by the said United States District Court:

Be It Remembered that the said causes or ac-

tions came on regularly for trial the 9th day of October, 1945, before Honorable Michael J. Roche, United States District Judge in and for the district aforesaid, without a jury, a trial by jury having been theretofore waived in each of the said causes, by each of the said defendants, and by the United States of America by and through the United States Attorney for the District aforesaid, with the approval and consent of the said District Court.

Thereupon counsel for the defendants in each cause and the United States Attorney stipulated, and the court thereupon ordered, that the said causes be consolidated for the purpose of trial.

Thereupon the following proceedings, and none other, were taken and had, and the following evidence, and none other, was introduced and received. [33]

Thereupon the United States Attorney made the following Opening Statement on behalf of the Government:

May it please the Court, in this matter the defendants Belluomini and Ruggiero are charged with possessing and transferring certain counterfeited and forged ration documents under circumstances which were in violation of the ration laws.

The events in these cases took place in May of this year. The defendant Ruggiero, as the record will show, is engaged in the management of a market called the Tunnel Market at 174 West Portal

Avenue in San Francisco, California. We will show by the defendants' admissions that the defendant Ruggiero did purchase a large quantity of red meat stamps, that is, ration stamps, which could be used for the purchase or transferred as currency for meat. Ruggiero had for a business associate the other defendant in this matter, one Amerigo Belluomini, who has a market at 3601 Balboa Street. Ruggiero transferred certain stamps to Belluomini. This was thoroughly a commercial transaction. We shall show these were stamps which were never properly transferable in the course of ration business. The Government's first witness will be Mr. Slade.

E. W. SLADE

called as a witness on behalf of the Government, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

I have charge of the Regional Verification Center of the Office of Price Administration, 1267 Mission Street, San Francisco. The function of the Verification Center is to [34] examine all ration currencies deposited in the bank after the public has used them. These examinations are done in my presence and under my supervision. I was so employed during the month of May, 1945. I have been in the Verification Center since its inception in the Spring of 1944. I saw Government's Exhibits 1-A to 1-H, inclusive, for Identification, on May 22,

(Testimony of E. W. Slade.)

1945. These envelopes were brought to me after they had been opened and the contents found to be counterfeits. I was asked to verify the counterfeit nature of the evidence. After a conference I typed the counterfeits CFM-4. These envelopes contained 500 counterfeits each, except the last one. There are 7 envelopes, each of which contained 500 counterfeits, and the last one contained 280 counterfeit stamps. The last one, to which I have just referred, was Government's Exhibit 1-B for Identification. After examining the envelopes and the contents, I typed the counterfeits; they were noted in the upper right hand of the envelope, I initialed the envelopes and the date of examination, and then I returned the evidence to the Special Agent of the Office of Price Administration, Mr. Reimel. I designated these envelopes by the code number, which was CFM-4. The stamps contained in those envelopes were not of a nature which could at any time be transferred as ration coupons. As soon as we discovered the evidence, I telephoned Mr. Reimel, who came over to the Verification Center. I handed the evidence over to him May 22. The five envelopes now shown me, which are marked Government's Exhibits for Identification 2-A to 2-E, inclusive, were brought to me by Mr. Reimel. I was asked to examine the contents of these envelopes and having done so I made a notation on the face of each, "Checked May 25, 1945." So I assume that was the date on which I examined those envelopes. Mr. Reimel was present. I examined these five envelopes

(Testimony of E. W. Slade.)

and found that each of them contained 500 counterfeit ration stamps of [35] the same type as we have previously found in the other matter. When counterfeits are found, they are classified as to type. During May we came across about 5 different types of counterfeits in this region. These types are assigned by the national office in Washington. When we run across a new counterfeit, we obtain the type number which has been already assigned to it, or, if a new counterfeit, a new number is assigned to it by the national office in Washington. The coupons contained in the envelopes marked "2-A" to "2-E" for Identification, inclusive, were the same type as the coupons contained in the envelopes marked Government's Exhibits "1-A" to "1-H," inclusive. That type of coupons we never issue for valid use under the rationing regulations. Each envelope contains 500 counterfeits. I found no genuine coupons in either Government's Exhibits 1-A to 1-H inclusive, or in Government's Exhibit 2-A to 2-E, inclusive.

Cross-Examination

By Mr. Duane:

We examine ration currencies after they have been used by the public. We put them through three examinations. This is not a spot check. It is a 100% check. They use certain chemical processes for that purpose. That is one of the tests. From the data before me, I identify them as counterfeits.

(Testimony of E. W. Slade.)

By Mr. Ferriter:

That is the usual course of practice, only when we have already found counterfeits. We then merely suggested that the deposits in that bank be examined, and we wait for them to come to the Verification Center. It is the customary practice when we find evidence of that kind. [36]

Re-Direct Examination

By Mr. Colvin:

We have a visual examination, and we have certain laboratory tests. The visual examination will show,—there are certain things, such as, for instance, the number of perforations around the edge of a stamp. These perforations are too frequent in the counterfeits. I refer particularly to the vertical perforations. There are about 17 in the counterfeit stamps. There should be only 12. All the stamps issued by the Government for Region 8 contained 3 little dots circled in the cornucopia. These counterfeits are only dotted on the upper circle. The paper, of course, is spurious. It is negative to all safety devices, which the Government placed in its own paper. The Government paper is a fluorescent water mark which fluoresces under the ultra-violet light. This stamp is dead under the ultra-violet light. The Government paper has a design printed on the reverse, which comes out with the application of a certain chemical. On applying that chemical to these counterfeits, there is no such

(Testimony of E. W. Slade.)

pattern that comes out. The process design, which is a designed background on these stamps, contains several errors in the counterfeit. In the genuine stamp, the eagles are printed diagonally; in the counterfeits the eagles are printed straight up and down. The shield in the counterfeit contains four lines. It should contain only three. The printing process is a typographical one, instead of being a letter process. The printing job is more readily done than in the genuine stamps. Aside from the chemical tests, there are certain physical tests by which the human eye can distinguish these coupons from the genuine [37] coupons, which are called visual tests.

After examining Government's Exhibits 2-A to 2-E, inclusive, I returned these envelopes to Mr. Reimel.

(To the Court:) Before I went there, I was in charge of the British Import and Export house or branch in China and Japan. I was in the Kobe, Yokohama and Nagoya branches.

JAMES REIMEL

called as a witness on behalf of the Government, and being first duly sworn, testified:

I am special assistant to the legislative auditor for the State of California. I was employed by the Office of Price Administration up until September 1st of this year, as special agent in charge of the San Francisco office Office of Currency Protection,

(Testimony of James Reimel.)

and was so employed during the month of May, 1945. I have seen these envelopes marked "Government's for Identification" numbers 1-A to 1-H, inclusive. These envelopes were handed to me by Mr. Slade at 2:00 p.m. on May 22, 1945, as I recall it. I put my initials on them. I then took them with me and called on the Tunnel Meat Market, West Portal Avenue, San Francisco. I talked to the Manager of that place, Mr. Edgar Ruggiero. I see Mr. Ruggiero in the courtroom, seated immediately behind Mr. Duane. I showed him the envelopes and contents. I believe I opened the envelopes at that time. I had a conversation with Mr. Ruggiero with reference to the contents of the envelopes. Mr. Ruggiero and myself talked for approximately an hour concerning these stamps. There were other employees in Mr. Ruggiero's meat market, but I doubt if any of them were present and heard the conversation. That conversation took place on the same day I had first received the envelopes, the [38] 22d of May, 1945. I inquired of Mr. Ruggiero if he had any knowledge of the source of the stamps.

Mr. Ferriter: It will be agreed, I take it, this conversation is not binding upon the defendant Belluomini.

The Court: Not unless it is connected up.

The Witness: (continuing) He stated at that time he did not have any knowledge of the source of these particular stamps. I explained to him that they were counterfeit. He agreed that they had been placed by him in the West Portal branch of the

(Testimony of James Reimel.)

Bank of America. During the conversation he stated that he was not the owner of the market, but was under the direction of a Mr. Belluomini, the owner. After talking with him for some time, I found nothing concerning where he got the stamps. He did not recall it, except to say that he got them through the manager of his place of business at that time. The conversation ended, I should say, about 4:30 or 5:00 o'clock. I kept these envelopes in my possession. I had a conversation with Mr. Ruggiero later that day, at approximately 7:30 p.m., May 22, 1945. During part of that conversation Mr. Amerigo Belluomini was present at his place of business. I see Mr. Belluomini here in court: the second gentleman on the far side of the table.

[Counsel for the defendant stipulated that the witness identified the said defendant.]

After leaving Mr. Ruggiero's place of business, I waited outside the shop until about 6:00 p.m., then I went to the place of business operated by Mr. Belluomini at 3601 Balboa Boulevard in San Francisco. I drove up on the outside. I could see Mr. Ruggiero and Mr. Belluomini carrying on a conversation inside the place. After waiting a few minutes, I walked in and spoke to Mr. Ruggiero. [39]

He said he had some more to tell me about the stamps. We stepped outside the shop. I sat in the car which I had been driving, and at that time Mr. Ruggiero stated that he could tell me now where he got the stamps. He stated that on or about

(Testimony of James Reimel.)

May 5 a person came into the shop, the shop he was managing, the Tunnel Market, and bought some meat. This person came in a few times later, maybe two or three times later and made a habit of talking with Ruggiero. Finally he stated he wanted some steak, was willing to pay any price but was short of stamps and would Ruggiero let him have enough points. Mr. Ruggiero said no, that he was up against it for points himself and with that the stranger stated that he could supply Mr. Ruggiero with some points at a later date if he would be interested. According to Mr. Ruggiero, he stated, "Well, what butcher wouldn't be interested in getting more stamps!" So a few days after that this individual called Mr. Ruggiero by telephone, stated he now had 8,700 stamps which he would be willing to sell to Mr. Ruggiero for a price of \$1,820 cash. Mr. Ruggiero said that previous to this telephone conversation he had talked the matter over with Mr. Belluomini. Mr. Belluomini was agreeable to take some stamps, although he didn't want as many as he finally got, according to both he and Ruggiero. After the telephone conversation Ruggiero went to the bank, West Portal Branch, there cashed a check for \$1,820 to get the cash to pay off this seller of the counterfeit stamps. Ruggiero after getting the cash returned to the shop. A few minutes later the gentleman came in and left him 8,700 stamps, 87,000 points, which were each worth 10 points. After he received the stamps he turned 5,000 stamps over to Mr. Belluomini and

(Testimony of James Reimel.)

the other 3,700-3,800 he deposited in the West Portal branch of the Bank of America. On or about May 19 they were sent by that bank to the verification center where Mr. Slade on the 22d of [40] May discovered them and called our office. I have seen Government's for Identification numbers 2-A to 2-E inclusive, consisting of 5 envelopes. I acquired these envelopes containing stamps from the Bank of America in the 3700 block of Balboa Street in San Francisco, from the assistant cashier, whose name appears on the back of the envelope. Mr. Amerigo Belluomini was present at that time. On the evening of May 22, after I had talked with Mr. Ruggiero, Mr. Belluomini was brought into the conversation a little later, and stated that he had deposited some of the stamps which he got from Mr. Ruggiero in the bank on Balboa Street. At that time it was agreed that on the following morning I would call on Mr. Belluomini and he and I together would go to the Bank of America and there check to see if these stamps still were there. He had a record showing that he had deposited 25,000 points at the Bank of America on May 9. Twenty-five thousand points would be 2,500 stamps. On the following morning, Mr. Belluomini and myself went down to the bank and talked to the assistant manager in charge of the bank, who permitted us to go in and look at the deposit made by Mr. Belluomini. We examined the envelopes. Most of them I slit open in the presence of the cashier and Mr. Belluomini, and examined the stamps. Out of

(Testimony of James Reimel.)

his deposit we located these five envelopes. Mr. Belluomini placed his signature at the top and bottom of each one the day we acquired them from the bank. I had a conversation, which I have not yet related, with the defendant Belluomini, on May 23. I asked Mr. Belluomini what had happened to the balance of the stamps. He told me he had acquired 5,000 and Mr. Ruggiero said he had turned over 5,000 stamps, yet we only found 2,500 in the bank depositary. He then related that one of his friends who occasionally worked for him, kept his books, and made deposits at the bank for him, whose name is Leo Messaglia, had been in the butcher shop on the same evening that I was there, May 22, just previous to my getting there, and at that time Mr. Belluomini and Mr. Ruggiero had talked the matter over. They knew they had bad stamps. They advised Mr. Messaglia to destroy the balance which he was supposed to have in his home. Mr. Messaglia lives over in Fairfax. According to Mr. Messaglia, he went home that night and placed the 2,500 stamps, counterfeit stamps, in his stove and burned them up because he was advised that I would want to see him. On the evening of May 22, Mr. Messaglia, Mr. Belluomini and Mr. Ruggiero were in my office at 1355 Market Street, and there reduced their information and statements to affidavit form. They accompanied me willingly. Three of the persons named, and I believe Miss Paige, my stenographer, were present during the conversation. I don't recall any other person present at that

(Testimony of James Reimel.)

time; there may have been. That statement may have been made May 23d, I am not exact about that. It was either the day I first talked with Ruggiero or the following day. I advised them that the statement was to be given voluntarily, and they were not threatened or promised, nor were they told they would escape prosecution at any time. I advised them of my official position.

Thereupon the statement of Edgar Ruggiero was marked "Government's Exhibit 3 for Identification."

The Witness: United States Exhibit 3 for Identification, which bears a signature in writing, "Edgar Ruggiero," is the statement of Mr. Ruggiero to which I have referred.

Thereupon the witness read to the court the said exhibit, which is in the words and figures following to-wit: [42]

"I, Edgar Ruggiero, do hereby report and state to Mr. J. O. Reimel, an agent for the Office of Price Administration, the following facts:

"This statement has been given of my own free will, I have received no promises or been threatened in any way. I state that I am 30 years of age and reside at 1435 22nd Avenue, San Francisco, California. I am married and have two minor children. I am employed as manager of the Tunnel Meat Market, 174 West Portal Avenue, West San Francisco, California.

"On or about May 5, 1945, I was approached by

(Testimony of James Reimel.)

one of my customers, a man whose name I do not know, or whose residence I do not know, who asked me if I needed meat points. I told him I could use them so he said someday he might bring me in some. He brought in a large brown manila envelope containing approximately 87,000 red meat points. I did not check the number of coupons at that time but took his word for the fact that there were that amount of points in the envelope. The man who brought the stamps in to me quoted me a price of \$1,820 cash or twenty cents per coupon. I became acquainted in the following manner: He came into the market and purchased meat from me numerous times before he brought up the question of me wanting points, and each time he made a purchase he paid cash for the meat and gave me the exact number of points. Then after he had been in a number of times, he wanted a roast and some steaks. He said he didn't care about the price but he did not have any points. I told him it was impossible to give him any meat without points and he seemed curious and wanted to know why. I explained to him that we needed points when we purchased our meat and that if we sold meat [43] without points we wouldn't have any points left to buy any meat. That was when he asked me if I could use some points and at that particular time I could. We had just had a robbery and I had lost 29,810 points which the Office of Price Administration denied to refund. After I had purchased these stamps

(Testimony of James Reimel.)

a check came from the Office of Price Administration for 29,810 points.

“My conversation with the man who sold me the stamps were each time very brief. He just came in and out like any other customer and I never learned his place of residence or his name or his place of business. I can best describe him as about 5' 7" in height, weight 150 pounds, dark complected, wore a hat over his eyes, wore dark glasses and sport clothing. One of the outstanding features that impressed me was the thinness of his face and high cheek bones. His clothing looked to me as if it were expensive, and the shirt which he wore, blue in color, might have been hand tailored. It is my opinion I would be able to identify the individual if I were to see him again, but since the day he sold me the stamps he has not made an appearance at the Tunnel Market.

“On the day that I bought the stamps the following arrangements were made: I was called by this individual over my telephone at the market and he asked me if I still wanted the meat stamps and stated he wanted cash for them. He then quoted the price to me and said he would be out in about one-half hour. I then drew a check for \$1820, made it out to myself, and went to the Bank of America and there obtained that amount of cash and returned to my place of business. Soon after I returned to my place of [44] business the individual came in carrying the above envelope containing the coupons. I opened this envelope to ascertain the

(Testimony of James Reimel.)

contents, I gave him the money and then he departed.

“Before I definitely made arrangements to take the coupons from the man, I called the owner of the market, Mr. Amerigo Belluomini, owner and operator of the 37th and Balboa Market, and asked him if he still wanted some meat stamps. He said yes that he did. It was my opinion that Mr. Belluomini was to take one-half of the stamps. After having obtained the stamps I took them home and my wife counted part of them and I counted the rest. My wife does not know the source of the stamps. It is an ordinary thing for me to take my stamps home and have her count them. After I had the stamps counted, I brought 50,000 points to Amerigo Belluomini in ten small envelopes of 500 stamps each. I collected from Mr. Belluomini a sum of \$1000.00 at a later period. The other 37,800 I deposited to my ration bank account at the Bank of America, West Portal Branch.

“Subsequently I gave the Office of Price Administration representative a check for 37,800 points to take care of the stamps that were placed in my account.

“I have since been advised that the stamps which I bought from this unknown person were counterfeit. At the time I bought them I didn't really stop to consider the source of the stamps. On the evening of Tuesday, May 22, 1945, at about 6:30 p.m., I was engaged in a conversation with Mr. Belluomini and Leo Messaglia at the 37th and Bal-

(Testimony of James Reimel.)

boa Market, and during [45] the conversation we were discussing what to do with the remainder of the meat points which I transferred to Belluomini, as I learned that Belluomini has not used all of them and I am not familiar with how many he had not used. We thought the best way to confiscate that portion which Belluomini had not used was burning them.

"I have given the above statement of my own free will and I know of no additional facts at this time which will change or add to the statement. I have read and am thoroughly familiar with the contents.

"EDGAR RUGGIERO

"Witness: Amerigo Belluomini.

"Subscribed and sworn to before this 23rd day of May, 1945.

"J. O. REIMEL

Investigator, Office of Price
Administration."

The Witness: (Continuing) The document now shown me, marked Government's Exhibit No. 4 for Identification, which is entitled, "Office of Price Administration,—Statement," and bears the signature of A. Belluomini, is one of the written statements taken at the conversation to which I have already referred.

Thereupon the witness read to the Court the said

(Testimony of James Reimel.)

statement, which is in the words and figures following, to-wit:

“I, Amerigo Belluomini, do hereby report and state to Mr. J. O. Reimel, an agent for the Office of Price Administration, the following facts:

“This statement has been given of my own free will, I have received no promises or been threatened in [46] any way. I state that I am 52 years of age and own and operate the 37th and Balboa Market at 3601 Balboa Street in San Francisco. I also own the Tunnel Market at 174 West Portal Avenue, San Francisco, California.

“On or about May 5, 1945, I received a telephone call from one of my employees, Edgar Ruggiero, who manages the Tunnel Market, and Ed asked me if I was interested in obtaining some meat stamps and I told him I was. He told me that he had an opportunity to obtain 86,000 points but I did not want that many and remarked that I would take one-half. I did not mean that I would take one-half of 86,000, but I meant that Ed should take only 43,000 and that I would take one-half of the 43,000. A couple of days after this telephone conversation, Edgar Ruggiero brought to my place of business on Balboa Street ten envelopes each containing 500 red meat stamps. I did not open the envelopes but assumed each envelope contained meat stamps. These envelopes were later turned over to Leo Messaglia who usually prepares my ration currency deposit slips. I believe Leo prepared five envelopes each containing 500 points of the above

(Testimony of James Reimel.)

mentioned stamps for deposit and they were deposited to my ration bank account on May 9, 1945, at the Bank of America, 3701 Balboa Street in San Francisco.

“On May 23, 1945, I accompanied Mr. Reimel to the Bank of America and there examined the deposits made by my place of business and was shown five of the envelopes which I had deposited and it was explained to me by Mr. Reimel that each of these five envelopes contained counterfeit coupons. I have placed my initial on the back of each envelope.

“On May 22, 1945, at about 6:30 p.m., I was engaged in [47] “conversation with Mr. Ruggiero and Geo. Messaglia, and among ourselves it was thought the best policy to destroy the balance of coupons which I had obtained from Ruggiero. As I obtained approximately 50,000 of the points and had used 25,000 of the points, it is my opinion that I still had 25,000 points left, these being in the custody of Leo Messaglia. It was thought best to burn them and according to my belief, Leo went home and burned them either on Tuesday evening, May 22, 1945, or early Wednesday morning, May 23, 1945. At no time did I ever have occasion to become acquainted with the man who sold Ed the stamps, and I do not know his identity. Further, I never knew the stamps which I obtained from Edgar Ruggiero were counterfeit.

“I have given the above statement of my own free will and I know of no additional facts at this

(Testimony of James Reimel.)

time which will change or add to the statement. I have read and am thoroughly familiar with the contents.”

The Witness: (continuing) This statement is signed by Mr. Belluomini and witnessed by Mr. Ruggiero.

These envelopes, marked “Government’s Exhibits 1-A to 1-H, inclusive, were returned to our office. I have a steel cabinet there and have the key. I kept these envelopes locked in that cabinet until they were submitted to the United States Attorney’s Office. As far as the physical condition of the envelopes is concerned, they are now in the same condition as they were when I delivered them to the United States Attorney’s Office.

The envelopes marked “Government’s for Identification 2-A to 2-E” were not shown to the defendant Ruggiero. Mr. Belluomini has seen them. But after having had Mr. Slade of the verification [48] center verify they were counterfeits, they were taken to our office and locked in the steel cabinet until they were turned over to the United States Attorney with the report, and they are now in the same physical condition that they were when I turned them over to the United States Attorney.

Cross Examination

By Mr. Duane:

I first saw the defendant Ruggiero on May 22 in the late afternoon. It was the following day that I took the statement. I had some conversation with

(Testimony of James Reimel.)

him on the 22d. Somewhat along the lines of the statement. I did not check on the matter of the check that he cashed for \$1820 or on the statement that the establishment was burglarized. He told me, however, that the place had been robbed and about 29,000-odd points were stolen. He gave me a check to the best of my memory, for 37,800 points, to make good the points that had gone into the bank. His statements to me were all freely and voluntarily given. There was no promise or anything of that kind in connection with the statements whatsoever. I would say that he cooperated as far as he could.

Cross Examination

By Mr. Ferriter:

I first met Mr. Belluomini on the evening of May 22, 1945. I conversed with him at that time. I saw Mr. Belluomini and his employee, Mr. Ruggiero, in the market at 37th and Balboa. I walked into the place, and I saw them standing at the counter. At that time Mr. Ruggiero told me there was [49] something additional he could tell me. I believe he explained to me on that evening he had deposited his stamps at the Bank of America. Up to that time I did not know Mr. Belluomini's activities or complicity in the matter. He volunteered that himself.

Thereupon Government's Exhibits for Identification Nos. 1-A to 1-H, inclusive, were admitted in evidence as Government's Exhibits 1-A to 1-H inclusive, as to the Defendant Ruggiero;

Government's Exhibits for Identification Numbers 2-A to 2-E, inclusive, were admitted in evidence as Nos. 2-A to 2-E, as to the defendant Belluomini.

The exhibits were marked accordingly.

Government's Exhibit for Identification 3 was admitted as Government's Exhibit No. 3 in evidence, as to the defendant Ruggiero; the exhibit was so marked;

Government's Exhibit 4 for Identification was admitted as Government's Exhibit No. 4 in evidence, as to the defendant Belluomini, and was marked accordingly.

Thereupon counsel for the defendants moved for a dismissal of the charges upon the ground that the Government had not met the burden of proving the wilfulness of the acts complained of, and the said motion was urged by respective counsel and was denied by the Court.

EDGAR RUGGIERO

one of the defendants, called as a witness in his own behalf, and having first been duly sworn, testified:

I am 30 years of age, am a married man with two children and am a butcher by occupation. In April and May of this year I was manager of the Tunnel Market. During the month of April of this year the Tunnel Market was burglarized. We lost almost 30,000 points. I reported that burglary to

(Testimony of Edgar Ruggiero.)

the Office of Price Administration and made application to the Office of Price Administration for stamps in place of those that had been [50] stolen. They denied the application. I filed an appeal on a special form for that. The application was finally granted and the points were mailed to me some time in May of 1945. The document now shown to me is a card stating that my petition for replacement of meat and fats ration points is approved, and bears the printed signature, "War Price and Ration Board," and, in ink, "EEK Food Panel."

(The said document was admitted in evidence as Defendant Ruggiero's "Exhibit A.")

I got my stamps previous to the time I got that card. Some time early in May I had some ration stamps, but not enough to operate with. On the occasion I had the conversation with the man that I referred to in my statement, I had very few stamps on hand. I may have been overdrawn in the bank at that time, I don't know exactly how the checks were that were outstanding. I was pretty close to being overdrawn. Maybe I had a thousand on deposit. I don't know how close I was. I received those stamps from the ration board as a replacement. I purchased those stamps from this man and paid him \$1820 for it. I drew a check payable to myself and went to the bank with that check and cashed it, and paid this man for the stamps. I gave some 50,000 points to Mr. Belluomini. I did not know at the time I purchased these stamps that they were counterfeited stamps. I made good

(Testimony of Edgar Ruggiero.)

some 37,800 points to the bank. I made the check payable to the Office of Price Administration, and they deducted from my account. I have never been in any difficulty before.

Cross Examination

By Mr. Colvin:

At the time I got the stamps I had no conversation with the man from whom I purchased them. He just came in, I [51] gave him the money, and he gave me the stamps, and he left. The stamps were in a large brown manila envelope. I opened the envelope at that time and looked at the stamps. I did not ask any questions at all. I just looked at them, gave him the money and he went right out. I picked up a handful. I put my hand down and picked up the envelope to see if there were stamps in there. I had no conversation with the man regarding his source of the stamps. He didn't say anything at all except previous, when he came in to the store, he didn't say anything at all, he just came in and went out. I gave him the \$1,820, and he went out. I didn't count them then; there were too many stamps to count. That same night they were put in envelopes by my wife and myself, each envelope containing 500 stamps.

Re-Direct Examination

By Mr. Duane:

I had seen the man several times in my shop. He had been making purchases a few times. He

(Testimony of Edgar Ruggiero.)

had paid stamps and money for his purchases. I have related in this statement that on some occasions he came in there and he wanted some meat and said he had no stamps. I told him I could not serve him because we had been so awfully short of stamps right then. On that occasion, he did not get any meat from me.

Re-Cross Examination

By Mr. Colvin:

At no time in these earlier conversations did he tell me what kind of stamps he was going to sell me or what the numbers would be. Referring to Government's No. 2-E, a patch of four stamps, I couldn't really remember how many stamps there were in each patch. I just counted them out. They [52] all looked alike. They were in uniform patches. I don't know about the lettering. I can't remember whether they were creased in any way. They all looked in pretty good condition. I don't think any of them showed any signs of having been used before. I couldn't tell you whether they appeared to be newly printed stamps. I didn't think of it, as far as being newly printed. I didn't think of the stamps at all. I mean I just had them on the counter and I deposited them. I thought they were all right.

AMERIGO BELLUOMINI

one of the defendants, called as a witness in his own behalf, and having been first duly sworn, testified as follows:

“I am 53 years of age, a veteran of the last World War, and a married man. I admit I got 50,000 of these points from my employee Mr. Ruggiero. The matters and things that Mr. Ruggiero testified to I also admit, as well as my statement, which has been read to the court here. I did not have any knowledge whatsoever of the counterfeit or false nature of these stamps. I recall meeting my employee, a Leo Messaglia, in my butcher shop and market on Balboa Street on the evening of May 22. That is the first time I met Mr. Reimel. I never [had] seen Mr. Reimel before. He was standing outside. Mr. Reimel afterward came in. I know that conversation with Mr. Ruggiero while he was outside. Before the meeting Mr. Ruggiero told me the stamps were not good. I did not know that. I went outside and met Mr. Reimel at the car. At that time I told him I also had some stamps. He did not accuse me of having any stamps. I voluntarily told him. I also had some of the stamps. I told him that I deposited some of them, 25,000. Subsequently I took him myself to the bank to get those stamps. [53] I run this particular butcher shop at 37th and Balboa. I have been engaged in the meat business pretty near 40 years. I sell a great deal of meat. I have not been able to sell as much meat during this war as I did prior to the war. I would have sold a lot more if I would have got it, but

(Testimony of Amerigo Belluomini.)

I was not getting very much meat. The operation of my business caused me to lose stamp values. Waste the meat; you can't control all the men. We have four or five butchers. There was a constant loss of points. In my business I was forced to lose points by the manner in which I bought meat. That is one of the reasons why I wanted these stamps. I wanted to stay in business.

Cross Examination

By Mr. Colvin:

The patch of 4 stamps appearing on the outside of the envelope (Government's Exhibits 2-A to 2-E inclusive) I never handled. I never even seen them. I just took them and turned them over to Messaglia. I never seen them. I never opened the envelope or seen them. It is my testimony that I never opened the envelope. There were no stamps attached to the outside of the envelopes when I received them. They were closed. Mr. Ruggiero did not tell me anything about these stamps when I received them from him. He just said, "They are the stamps." I didn't question him because he called me previously, he said some man wanted to give him some stamps. I don't know if he bought them, or what he gave for them, but I know I paid for them. Mr. Ruggiero told me the price of the stamps. [54]

Thereupon both parties rested and the following proceedings occurred:

The Court: Is the matter submitted on both sides?

Mr. Ferriter: Yes.

Mr. Colvin: Yes, your Honor.

The Court: I find the defendants and each of them guilty on the three counts charged.

Thereupon the court ordered the cause continued until the 12th day of October 1945 for judgment.

Be It Further Remembered that on the day last aforesaid, after hearing counsel, the court rendered and pronounced judgment that each of the said defendants be fined the sum of \$1,000 on each count of the said indictment, and be imprisoned for a period of six months on each count of said indictment, the said terms of imprisonment in the case of each defendant to run concurrently, all of which from the judgments and sentences of record herein fully and at large appears.

And Now, and Within Due and Legal Time after the pronouncement of the judgments and sentences aforesaid, and within the period of time fixed by law and by the order of the said District Court in the premises, the said defendants present this, their Bill of Exceptions, to be used upon the appeals of said defendants to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the several [55] judgments and sentences aforesaid, and pray that the said Bill of Exceptions be by the Court settled, approved and allowed, and that the same may be a part of the record to be sent to said United States Circuit Court of Appeals.

Dated this 25th day of October, 1945.

(Signed) WM. E. FERRITER

Attorney for Defendant

Amerigo Belluomini.

(Signed) WALTER H. DUANE

Attorney for Defendant

Edgar Ruggiero.

STIPULATION

It Is Hereby Stipulated by and between counsel for the said defendants, and the United States Attorney for the Northern District of California that the foregoing Bill of Exceptions contains the full substance of all the evidence, and sets forth truly and correctly all of the proceedings taken and had upon the trial of the actions entitled as above, which were consolidated for trial, and that the said Bill of Exceptions is in all respects full, true and correct, and that the same may be used as the Bill of Exceptions upon the aforesaid appeals of said Defendants to the [56] United States Circuit Court of Appeals for the Ninth Circuit.

It Is Further Stipulated that the said Bill of Exceptions shall be the Bill of Exceptions for each and both of the said defendants, and that

the said appeals may be presented and heard upon a single transcript.

/s/ FRANK J. HENNESSY

/s/ By REYNOLD H. COLVIN

United States Attorney for the Northern District
of California.

/s/ WM. E. FERRITER

Attorney for Defendant

Amerigo Belluomini.

/s/ WALTER H. DUANE

Attorney for Defendant

Edgar Ruggiero.

To the end that the matters and things aforesaid may be and remain of record, the foregoing Bill of Exceptions hereby is settled, approved and allowed as being the Bill of Exceptions on appeal of each of the defendants in each of the above entitled causes or actions, which were consolidated for trial, and that the said Bill of Exceptions contains the full substance of all the evidence taken and had upon the trial of the said consolidated actions, and that the same is in all respects full, true and correct, and that the same be a part of the record herein to be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Done in Open Court October 31st, 1945.

/s/ MICHAEL J. ROCHE

United States District Judge.

(Service Acknowledged.)

[Endorsed]: Filed Oct. 3, 1945. [57]

In the United States Circuit Court of Appeals for
the Ninth Circuit

District Court No. 29633-R

AMERIGO BELLUOMINI

Appellant

vs.

UNITED STATES OF AMERICA

Appellee

District Court No. 29635-R

EDGAR RUGGIERO

Appellant

vs.

UNITED STATES OF AMERICA

Appellee

ORDER CONSOLIDATING APPEALS FOR
HEARING ONE TRANSCRIPT

The causes entitled as above having been consolidated for trial in the United States District Court for the Northern District of California, and the same evidence having been introduced and the same proceedings taken in said District Court upon the one trial as to both causes, and the [58] questions presented by each of said appeals being the same, and there being no necessity for the printing of the record and proceedings in separate transcripts; and counsel for the respective parties having stipulated thereto, it is therefor

Ordered that the said appeals be consolidated for hearing on one transcript, consisting of the pleadings, records and other papers set forth in the praecipe filed by the above named appellants.

Dated this 15th day of November, 1945.

FRANCIS A. GARRECHT

United States Circuit Judge.

[Endorsed]: Filed Nov. 15, 1945. Paul P. O'Brien, Clerk.

The foregoing Order is hereby consented to.

REYNOLD H. COLVIN

Asst. United States Attorney

WILLIAM E. FERRITER

Attorney for Appellant

Amerigo Belluomini

WALTER H. DUANE

Attorney for Appellant

Edgar Ruggiero

A True Copy. Attest: Nov. 15, 1945.

[Seal] /s/ PAUL P. O'BRIEN

Clerk.

[Endorsed]: Filed Nov. 15, 1945. C. W. Calbreath, Clerk. [59]

In the District Court of the United States for
the Northern District of California, Southern
Division

No. 29,633-R

UNITED STATES OF AMERICA

vs.

AMERIGO BELLUOMINI,

Defendant.

No. 29,635-R

UNITED STATES OF AMERICA

vs.

EDGAR RUGGIERO,

Defendant.

PRAECIPE FOR RECORD

To the Clerk:

Kindly furnish the following papers in the causes
numbered and entitled as above, to be used on the
appeals of the above named defendants to the
United States Circuit Court of Appeals for the
Ninth Circuit:

1. The Caption.
2. The Names and Addresses of Counsel.
3. The Indictment in No. 29633-R.
4. The Indictment in No. 29635-R.

5. The Demurrer of the Defendant Amerigo Belluomini to the Information in No. 29633-R.

6. The Minute Order of the Court Overruling the said Demurrer.

7. The Minutes of the Trial.

8. The settled Bill of Exceptions.

8-a. The Assignment of Errors of each Defendant.

9. The Judgment and Sentence in each case.

10. The Commitment.

11. The Notice of Appeal in No. 29633-R.

12. The Notice of Appeal in No. 29635-R.

13. Stipulation for the Hearing of the Appeals on a Single Transcript.

14. The Praecipe.

Dated: November 2, 1945.

WILLIAM E. FERRITER

Attorney for Defendant

Amerigo Belluomini.

WALTER H. DUANE

Attorney for Defendant

Edgar Ruggiero.

(Service Admitted.)

[Endorsed]: Filed Nov. 15, 1945. [61]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 61 pages, numbered from 1 to 61, inclusive, contain a full, true, and correct transcript of the records and proceedings in the consolidated cases of United States of America vs. Amerigo Belluomini, No. 29633-R, and United States of America vs. Edgar Ruggiero, No. 29635-R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$11.75 and that the said amount has been paid to me by the Attorneys for the appellants herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 22nd day of December, A. D. 1945.

[Seal]

C. W. CALBREATH,

Clerk

/s/ M. E. VAN BUREN

Deputy Clerk [62]

[Endorsed]: No. 11165. United States Circuit Court of Appeals for the Ninth Circuit. Edgar Ruggiero and Amerigo Belluomini, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed February 13, 1946.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.